

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 2004-279-C - ORDER NO. 2005-385(A)

JULY 27, 2005

IN RE: Application of Time Warner Cable	)	<u>AMENDED ORDER</u>
Information Services (South Carolina), LLC,	)	GRANTING
DBA Time Warner Cable to amend its	)	AMENDMENT TO
Certificate of Public Convenience and	)	CERTIFICATE
Necessity to Provide Interexchange and Local	)	
Voice Services in Alltel South Carolina,	)	
Inc.'s Service Areas.	)	

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the necessity to amend Commission Order No. 2005-385 issued in the present docket. Order No. 2005-385 was issued July 20, 2005, on the Application of Time Warner Cable Information Services (South Carolina), LLC d/b/a Time Warner Cable which approved an amendment to Time Warner Cable's Certificate of Public Convenience and Necessity. On page one of Order No. 2005-385, the docket number is erroneously shown as Docket No. 2005-279-C. To correct this error, the present Order is being issued to reflect the appropriate docket number as Docket No. 2004-279-C. All other language of Order No. 2005-385 remains verbatim.

INTRODUCTION

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Application of Time Warner Cable Information Services (South

Carolina), LLC, d/b/a Time Warner Cable, ("TWCIS" or "Company") to expand its scope of authority. TWCIS submits its Application to amend its Certificate of Public Convenience and Necessity under Order No. 2004-213 to authorize TWCIS to serve customers throughout the service area of Alltel South Carolina, Inc. ("Alltel"). The Company is currently authorized to offer interexchange services to customers throughout the State and local telecommunications services to customers in South Carolina subject to a Stipulation entered into with the South Carolina Telephone Coalition. In Docket No. 2003-362-C, Order No. 2004-495, TWCIS was authorized to operate under an alternative regulatory plan under S.C. Code Sections 58-9-575 and 58-9-585 and seeks to operate under the same regulatory scheme in the Alltel service area.

TWCIS applied to provide the same services in the rural ILEC's service area that are provided in its current service area. In its certificated service area, TWCIS currently provides facilities-based Internet Protocol ("IP") voice service to customers that is offered on a bundled-flat rate basis and allows standard local calling in addition to operator services, directory assistance, enhanced "911" services, outbound 800 toll free calling, customer calling features such as call waiting, caller identification, and directory listings.

TWCIS notes that the information on the TWCIS' financial, technical and managerial ability filed in the original application remains materially unchanged since it was filed in 2003. TWCIS also notes that in Order No. 2004-213 the Commission concluded that TWCIS is financially qualified and that TWCIS possesses sufficient managerial and technical resources to provide telecommunications services and be

certificated by the Commission. In addition, TWCIS seeks the same limited waivers it was granted in Order No. 2004-213.

Pursuant to the instructions of the Commission's Docketing Department, the Company published notice of its filing of the Application in area newspapers. No protests were received. Alltel intervened in the matter but subsequently notified the Commission that it would not attend or participate in the hearing. The Office of Regulatory Staff ("ORS") does not oppose the expansion of the Company's service area. No other petitions to intervene were filed.

On March 3, 2005, TWCIS filed the verified testimony of Julie Patterson, Vice President and Chief Counsel, Telephony, for Time Warner Cable. On March 31, 2005, the Commission waived the hearing and granted expedited review of the Application with the stipulation that a copy of the transcript of the testimony given by Ms. Patterson in Docket No. 2004-280-C, *In re: Application of Time Warner Cable Information Services (South Carolina), LLC, d/b/a Time Warner Cable to Amend its Certificate of Public Convenience and Necessity to Provide Interexchange and Local Voice Services in Service Areas of Certain Incumbent Carriers who Currently Have a Rural Exemption*, be entered into evidence as part of the formal record in Docket No. 2004-279-C. We also grant the relief sought in the Application based upon the testimony of Ms. Patterson.

Ms. Patterson is responsible for the legal and regulatory affairs relating to TWCIS' deployment of Voice Over IP services and regulated telecommunications services throughout the country. Ms. Patterson presented evidence on the financial, technical, and managerial abilities of TWCIS to provide local services in the Alltel

service area in South Carolina. Tr. 14-15. She also described the services that TWCIS proposes to offer in the Alltel service area and how TWCIS planned to proceed with future tariff filings as a result of the Federal Communications Commission's recent ruling regarding the regulatory status of VoIP-based services. Tr. 16.

Ms. Patterson testified that TWCIS continues to rely on the same officers identified in the initial certification docket. She also testified as to the managerial and technical experience of the local employees headed by Charlene Keys, Vice President & General Manager of General Phone. Ms. Patterson noted that Time Warner Cable maintains a relationship with TWCIS whereby Time Warner Cable provides the funding, financing, and capital necessary to provide services to customers in the Alltel service area. Tr. 14-15.

Ms. Patterson testified that TWCIS intends to begin offering services in the Alltel service area once it obtains an interconnection agreement directly with Alltel or through its relationship with TWCIS' interconnecting carrier, MCI. Tr. 17-18, 94.

Ms. Patterson testified that the issuance of an amended certificate to TWCIS would be in the public interest in that competition will be further increased in South Carolina.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. TWCIS has submitted an application to amend its Certificate of Public Convenience and Necessity to serve customers throughout the Alltel service area in South Carolina.

2. The Company is currently authorized to offer interexchange services to customers throughout the State and local telecommunications services to customers in South Carolina subject to a Stipulation entered into with the South Carolina Telephone Coalition.

3. It is appropriate for the Company to continue to operate under the alternative regulatory plan under S.C. Code §§ 58-9-575 and 58-9-585 approved in Order No. 2004-495 for the Alltel service area.

4. Expedited review is appropriate for this Application.

5. The Company has the financial, managerial, and technical resources to provide the expanded local service to the Alltel service area.

6. The Company continues to meet all statutory requirements for the provision of service as a CLEC as delineated in S.C. Code Ann. Section 58-9-280 (Supp. 2004). Accordingly, the Company meets the statutory requirements to provide service in the proposed expanded service area.

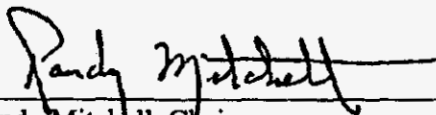
7. The Application for an amended Certificate should be granted as filed.

#### **ORDER**


Expedited review is granted. The Application of TWCIS for an amendment to its Certificate to expand into the service area of Alltel is hereby approved based on the evidence as outlined above. All reporting requirements and other directives found in Order Nos. 2004-213 and 2004-495 shall remain in full force and effect, unless exceptions are noted above, including, but not limited to those allowing various waivers.

The Company shall, in addition, file copies of all reports outlined in Order No. 2004-213 with the Office of Regulatory Staff, in addition to filing them with the Commission. The Company may continue to operate under the alternative regulatory plan approved in Order No. 2004-495. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
\_\_\_\_\_  
Randy Mitchell, Chairman

ATTEST:

  
\_\_\_\_\_  
G. O'Neal Hamilton, Vice-Chairman  
(SEAL)



BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2004-280-C - ORDER NO. 2005-412  
AUGUST 1, 2005

IN RE:	Application of Time Warner Cable	)	ORDER RULING ON
	Information Services (South Carolina), LLC	)	EXPANSION OF
	d/b/a Time Warner Cable to Amend its	)	CERTIFICATE
	Certificate of Public Convenience and	)	
	Necessity to Provide Interexchange and Local	)	
	Voice Services in Service Areas of Certain	)	
	Incumbent Carriers who Currently have a	)	
	Rural Exemption.	)	

**I. INTRODUCTION**

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Application of Time Warner Cable Information Services (South Carolina), LLC, d/b/a Time Warner Cable (TWCIS) to amend the Certificate of Public Convenience and Necessity issued to TWCIS by the Commission in Order No. 2004-213 in Docket No. 2003-362-C. By its Application, TWCIS seeks to provide interexchange and local voice services in the service areas of the following incumbent local exchange carriers: Farmers Telephone Cooperative, Inc. (Farmers); Fort Mill Telephone Company, d/b/a Comporium Communications, Inc. (Fort Mill); Home Telephone Company, Inc. (Home); PBT Telecom, Inc. (PBT); and St. Stephen Telephone Company (St. Stephen) (collectively, the rural incumbent local exchange carriers or RLECs). Each of the RLECs



has a rural company exemption pursuant to Section 251(f)(1) of the Federal Telecommunications Act of 1996.

A public hearing was held in this matter on March 31, 2005. TWCIS was represented by Frank R. Ellerbe, III, Esquire and Bonnie D. Shealy, Esquire. TWCIS presented the direct and rebuttal testimony of Julie Y. Patterson. The RLECs and the Intervenor South Carolina Telephone Coalition (SCTC) were represented by M. John Bowen, Jr., Esquire and Margaret M. Fox, Esquire. These parties presented the direct testimony of Emmanuel Staurulakis and H. Keith Oliver. The Office of Regulatory Staff (ORS) was represented by Benjamin P. Mustian, Esquire. ORS did not present a witness.

The opening statement by counsel for TWCIS is significant. Mr. Ellerbe stated that, although TWCIS is asking in this case to extend its certification into the areas served by the RLECs, it is not asking to set aside the RLECs' rural exemption under the Telecommunications Act of 1996. What TWCIS is asking is that this Commission extend the Company's already existing certificate to the RLECs' areas, so that it can propose interconnection agreements to those companies. Tr. at 7-8. This is the crux of TWCIS's ultimate case as presented, and it varies significantly from the original Application submitted. The testimony of the witnesses is summarized below.

## **II. SUMMARY OF TESTIMONY**

Julie Y. Patterson, Vice-President and Chief Counsel, Telephony for Time Warner Cable, testified on behalf of TWCIS. Ms. Patterson described the Company's corporate structure, presented evidence on the financial, technical and managerial abilities of TWCIS, and discussed the proposed expansion of TWCIS' certificated

authority. She testified that TWCIS currently provides to its customers “features similar to those offered by traditional analog telephone service but utilizes IP technology to transport telephone calls.” Tr. at 15. Ms. Patterson opined that the Federal Communications Commission’s decision in a case involving Vonage Holdings Corporation and the Minnesota Public Utilities Commission preempts this Commission from imposing certification and tariffing requirements with respect to certain VoIP services, and, therefore, TWCIS intends to withdraw the retail voice services in its current tariff once a new non-regulated entity is created to provide the retail voice services currently being offered by TWCIS. Tr. at 16. *See In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, FCC 04-267, released November 12, 2004 (the Vonage Order). TWCIS intends to remain a certificated carrier and plans to obtain interconnection services from incumbent LECs and eventually offer wholesale services to the newly created non-regulated entity, according to Ms. Patterson.

Emmanuel Staurulakis, President of John Staurulakis, Inc. (JSI), a telecommunications consulting firm, testified on behalf of the RLECs and SCTC. Mr. Staurulakis testified that the Vonage Order does not preempt the authority of the Commission to act upon TWCIS’ request to expand its certificated authority to include areas served by the rural LECs. Tr. at 136. Mr. Staurulakis asked the Commission to deny the application for expanded authority, given the potential adverse impact that TWCIS’ VoIP service offering may have on the availability of affordable local exchange service

to all rural telecommunications customers in the State. Tr. at 135. Mr. Staurulakis testified regarding the differences between TWCIS' proposed VoIP service and the service at issue in the Vonage case. See Tr. at 137; 154-157. Mr. Staurulakis further stated that it was not clear to him what TWCIS is seeking from the Commission at this proceeding. In addition, the witness states that this Commission should deny the requested authority because TWCIS has failed to meet the state public interest standard.

H. Keith Oliver, Vice-President of Finance for Home Telephone Company also testified for the RLECs and SCTC. Mr. Oliver asked the Commission to deny TWCIS' request to expand its certificated authority to provide service in five additional areas served by the RLECs because it is not in the public interest and because of its adverse impact on the availability of affordable local exchange service. Tr. at 181. Mr. Oliver pointed out that, while TWCIS suggests that it will compensate other carriers and comply with Commission regulations regarding contributions to the State USF and other requirements, it has only agreed to do so until issues involving IP-enabled services are resolved at the Federal level, and has only agreed to comply with "applicable" regulations while continuing to maintain that the service it seeks to provide is non-regulated and that none of the Commission's regulations apply to TWCIS. Tr. at 185, 194. Mr. Oliver stated that TWCIS' request should be denied, given the uncertainty in this area and the potentially devastating impact it could have on customers in rural areas if a carrier is permitted to provide service and later stops compensating other carriers for use of the Public Switched Telephone Network ( PSTN). Tr. at 185.

### **III. DISCUSSION**

Time-Warner's position in this case is confusing, to say the least. The original Application in this matter sought authority to expand its existing Certificate to directly serve customers in the RLECs' various service areas. At the hearing, however, the oral argument and testimony was to the effect that TWCIS intended to negotiate interconnection agreements with the RLECs subsequent to expanded certification and then provide services as a wholesaler to a Time-Warner non-regulated subsidiary, who would then serve the proposed areas. Further, TWCIS' attorney states that the Company is not seeking a waiver of the rural exemptions of the RLECs subject to the Telecommunications Act of 1996. We believe that this last position leaves us with very little choice as to how to rule in this matter.

Since, as amended at the hearing, the rural exemptions of the RLECs are not at issue in this case, we cannot waive those exemptions. Thus, there is a failure of proof regarding the original application. Accordingly, we must deny the Application for expansion of the Certificate as originally filed by the Company.

With regard to the Application as amended during the hearing, the Company seeks only the authority to enter into negotiations toward interconnection agreements with the local exchange companies under the rural exemption. This Commission already considers the Company to possess the ability to enter into these negotiations under Section 251 of the Telecommunications Act of 1996. No expanded Certificate is needed. The Commission recognizes this ability, and the Company may enter into such negotiations without further approval of this Commission.

Obviously, this Order should not be construed as a ruling on the waiver of the rural exemptions in this case, since this issue was not before the Commission.

Lastly, with regard to Time-Warner's late-filed Exhibit No. 1, we believe that we should admit the Exhibit into the evidence of this case, but we hereby note in the record of the proceeding the rural LEC's objection to the exhibit as stated by the rural LECs.

#### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Application of TWCIS originally sought an expanded Certificate of Public Convenience and Necessity to serve the service areas of the denominated rural local exchange carriers. At the hearing, TWCIS stated its desire to possess the expanded certificate so that it could enter into interconnection agreements with the rural LECs, and then serve a non-regulated Time-Warner subsidiary as a wholesaler. No expansion of the Company's Certificate is needed for it to enter into negotiations with the RLECs. The Company possesses this ability as a telecommunications carrier under Section 251 of the Telecommunications Act of 1996 and no further blessing of this Commission is needed for this undertaking.

2. The status of the RLECs rural exemptions is not before this Commission, so this Order should not be construed as ruling on a waiver of the rural exemptions.

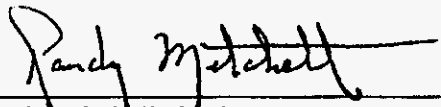
3. The original Application of the Company must be denied as moot based on representations made at the hearing and, therefore, for failure of proof as to the original request.

4. Exhibit No. 1 should be admitted into the evidence of this case, subject to the stated objections of the RLECs in its May 5, 2005 letter to this Commission.


**V. ORDER**

1. The original Application is denied.
2. We need not rule on the modified Application since the Company has the ability to enter into interconnection agreements without further expansion of its Certificate.
3. Exhibit No. 1 is admitted into the evidence of this case, subject to the stated objections of the RLECs.
4. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
\_\_\_\_\_  
Randy Mitchell, Chairman

ATTEST:

  
\_\_\_\_\_  
G. O'Neal Hamilton, Vice Chairman

(SEAL)



BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2004-280-C - ORDER NO. 2005-484  
SEPTEMBER 26, 2005

IN RE: Application of Time Warner Cable	)	ORDER DENYING
Information Services (South Carolina), LLC	)	REHEARING OR
DBA Time Warner Cable to Amend its	)	RECONSIDERATION
Certificate of Public Convenience and	)	
Necessity to Provide Interexchange and Local	)	
Voice Services in Service Areas of Certain	)	
Incumbent Carriers who Currently have a	)	
Rural Exemption.	)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Rehearing or Reconsideration of Order No. 2005-412 filed by Time Warner Cable Information Services (South Carolina), LLC (Time Warner, TWCIS or the Company). Because of the reasoning stated below, the Petition is denied and dismissed.

In its Petition, TWCIS asserts that the Commission erred in several respects. First, TWCIS contends that the Commission erred in finding that there was a failure of proof regarding the original Application. Petition at 2, paragraph 3. The Company further asserts that this Commission failed in finding that there is a failure of proof because TWCIS failed to request a waiver of the Rural Local Exchange Carriers' (RLECs') rural exemptions under 47 U.S.C. Section 251(f)(1) in this proceeding, and further contends that the Commission erroneously held that TWCIS "should have sought to pierce the rural exemption in this certification proceeding." Petition at 3, paragraph 4; Petition at 4, paragraph 7. These assertions are without merit.



First, the Commission's finding that there is a failure of proof with respect to the original Application is clearly supported by the evidence of record. There was a major discrepancy between the Application, the prefiled testimony, and the testimony presented at the hearing as to what authority the Company was seeking. The Application described the service for which it was requesting certification as follows: "TWCIS plans to provide facilities-based local and long distance Internet protocol ("IP") voice service, targeted to the residential market in [RLECs'] service areas..." TWCIS Application at paragraph 9. When TWCIS filed testimony in support of its Application, its position changed. Although the original Application was not amended, TWCIS sought different authority in its testimony. Ms. Patterson stated in her prefiled testimony that TWCIS intended to remain a certificated carrier and would obtain interconnection service from incumbent LECs and eventually offer wholesale services to the newly created non-regulated utility. TR at 16 (Julie Y. Patterson prefiled direct testimony at p. 5, ll. 18-23). At the hearing, TWCIS once again changed its description of the services for which it was seeking certification, by making references to seeking authority to provide "telecommunications services" as a "full-fledged CLEC." See, e.g., TR at p. 119, ll 10-12. TWCIS now argues that "the Commission ignored numerous instances in which Ms. Patterson testified that TWCIS seeks to amend its initial certification order to be a full-fledged CLEC in the service territories of the [RLECs]." TWCIS Petition at p. 3. This request to amend the initial certification, however, is not reflected in TWCIS's Application or in Ms. Patterson's pre-filed testimony in this proceeding. Further, it is not clear from the references to being a "full-fledged" or "fully regulated" CLEC as to exactly what services TWCIS seeks to provide. See, e.g., TR at 29, 35, and 119. The Commission's rules

require that “Applications shall state clearly and concisely the authorization or permission sought...” S.C. Code Ann. Regs. 103-834(A). However, if Time Warner intended to change its position with regard to the authority that it sought, it never sought to amend its original Application except on a *de facto* basis through testimony, which itself was unclear.

Upon reflection, it is still not clear exactly what authority TWCIS is seeking in this proceeding. However, upon viewing the hearing transcript along with the Application, there is substantial evidence in the record to support the Commission’s finding that TWCIS appears to be seeking only authority to enter into negotiations toward interconnection agreements with the RLECs. See No. 2005-412 at 5. Specifically, it appears that TWCIS is interested in receiving certification as a telecommunications carrier as a vehicle for obtaining network interconnection and other services from incumbent local exchange carriers like the RLECs. TWCIS would then provide those functionalities to its soon-to-be-created non-regulated entity, which would provide the IP local telephone service to end users. See, e.g., TR at 8-9 (“One reason we want to be certified is...we want to be able to negotiate Interconnection Agreements”); TR at 16 (“TWCIS intends to remain a certificated carrier and will obtain interconnection services from incumbent LECs and eventually offer wholesale services to the newly created non-regulated entity.”); TR at 38 (“At this point, we seek to obtain interconnection agreements and provide wholesale services to ourselves and to others and to tariff a wholesale offering”); TR at 56 (“We seek to provide a variety of non Internet protocol format telecommunications services in order to provide retail VoIP services and other services throughout the state of South Carolina”); TR at 56-57 (“[R]eally what we’re looking to

do here is to be able to step in and provide all of those transport and other telecommunications services that you show on the board that are provided [to TWCIS] today by MCF"); TR at 70 ("We need certification in order to obtain interconnection rights") TR at 128 ("What we seek through this proceeding is the ability on our own, as full-fledged telecommunications carriers to obtain interconnection agreements on our own"). Viewing the evidence as a whole, it is clear that the Company failed to prove the allegations of its original Application. Therefore, Time Warner's first allegation of error is without merit.

Furthermore, the finding that the Company could not obtain waiver of the rural exemptions in this proceeding because they are not at issue in this case is factually correct and does not prejudice TWCIS in any way. TWCIS acknowledged that it is not seeking to terminate rural exemptions in this proceeding. See TR at 18 (Patterson prefiled testimony at 7, ll. 15-23). TWCIS's assertion that the Commission held that TWCIS "should have" sought to terminate rural exemptions in this case is not reflected in the language of this Commission's order. This Commission merely noted that the rural exemptions were not at issue and made it clear that the order should not be read to waive or terminate those exemptions. See Order No. 205-412 at 5 ("Since, as amended at the hearing, the rural exemptions of the RLECs are not at issue in this case, we cannot waive those exemptions."); Order No. 2005-412 at 6 ("Obviously, this Order should not be construed as a ruling on the waiver of the rural exemptions in this case, since this issue was not before the Commission.") This appears to be an undisputed point. Id., See also TR at 18 (Patterson prefiled direct testimony at 7, ll. 15-23).

TWCIS further asserts that the Commission's order violates Section 253(a) of the Telecommunications Act of 1996 because it allows the RLECs to "effectively prohibit competition within their service areas until such time as they choose to interconnect with CLECs." See Petition at 3, paragraph 6. This Commission's order does not constitute a barrier to entry within the purview of the Act.

TWCIS argues that this Commission is somehow denying TWCIS the right to provide competitive service within the RLECs' service areas. See Petition at 3. Yet TWCIS itself stated to the Commission that it does not need certification to provide the competitive service it seeks to provide within the RLECs' service areas. See TR at 16 (Patterson prefiled direct testimony at 5, ll 18-19). TWCIS filed an Application seeking certification for its residential facilities-based local IP service offering. At the hearing, it stated that it did not need certification for that service, but would like to have a certificate for "other" services, to which it only made vague references. This Commission properly denied TWCIS certification with respect to the Application it filed because, as we found in our previous order, there was a failure of proof with respect to the original Application, as discussed above.

Further, if TWCIS' IP service is indeed a "telecommunications service," then TWCIS would be a "telecommunications carrier" and would be entitled to seek interconnection under Section 251 of the Act. See 47 U.S.C. Section 153(44), which defines "telecommunications carrier" as a provider of "telecommunications service." See also 47 U.S.C. Sections 251(a)(1) and 251 (c)(2). Assuming that TWCIS is a telecommunications carrier, then there is no barrier to entry because, as we stated, TWCIS does not need this Commission's approval to proceed under Section 251. See

Order No. 2005-412 at 5. If on the other hand, TWCIS is not a telecommunications carrier because it is not providing a telecommunications service, then Section 253 of the Act does not even apply.

In addition, TWCIS also contends that this Commission's ruling that TWCIS has the ability to negotiate interconnection agreements without being certificated violates state law and is erroneous as a practical matter. See TWCIS Petition at 5, paragraphs 8 and 9. This is incorrect. As noted above, TWCIS either has the right to request interconnection under Section 251 of the Act or it does not, depending on whether the services TWCIS seeks to provide are telecommunications services or not, which is an unsettled question under Federal law. Again, TWCIS does not need this Commission's approval to request interconnection under Section 251 of the Act. See Order No. 2005-412 at 5. The State statute cited by TWCIS, S.C. Code Ann. Section 58-9-280(C)(1) specifically states that its provisions "shall be consistent with applicable federal law." Therefore, if, as TWCIS suggests, it is entitled under Section 251 to obtain interconnection in order to provide a service for which it asserts that it does not need state certification, then Section 251 of the Act would govern.

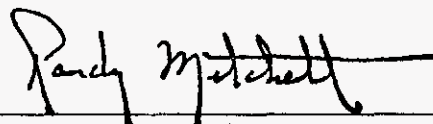
Finally, TWCIS contends that the Commission's decision is arbitrary and capricious because TWCIS met the statutory certification requirements. See Petition at 6, paragraphs 10-11. As discussed above, however, TWCIS's Application was not sufficient and the authority sought by TWCIS was, at best, unclear. This allegation of error is without merit.

Moreover, TWCIS's assertion that it need not demonstrate a need in order to be granted a Certificate of Public Convenience and Necessity is perplexing. See TWCIS

Petition at 1 (“lack of immediate need for a certificate is not a valid ground for withholding one.”) TWCIS’s apparent belief that it is only required to show that it has the technical, managerial, and financial ability to provide services in South Carolina in order to receive a certificate essentially ignores half of the certification statute, and would allow carriers to receive a certificate even when they do not state with specificity the services for which they request certification. This position is contrary to state law, ignores the statutory role and duties of the Commission, and must be rejected.

Accordingly, because of the above-stated reasoning, the Petition for Rehearing or Reconsideration of Order No. 2005-412 filed by TWCIS is denied and dismissed. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Randy Mitchell, Chairman

ATTEST:



G. O'Neal Hamilton, Vice-Chairman

(SEAL)



BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2005-67-C - ORDER NO. 2005-544  
OCTOBER 7, 2005

IN RE: Petition of MCImetro Access Transmission	)	ORDER RULING
Services, LLC for Arbitration of Certain Terms	)	ON ARBITRATION
and Conditions of Proposed Agreement with	)	
Farmers Telephone Cooperative, Inc., Home	)	
Telephone Co., Inc., PBT Telecom, Inc., and	)	
Hargray Telephone Company, Concerning	)	
Interconnection and Resale under the	)	
Telecommunications Act of 1996.	)	

**I. PROCEDURAL BACKGROUND**

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Petition for Arbitration ("Petition") filed by MCImetro Access Transmission Services, LLC ("MCI") for arbitration of certain issues pertaining to the terms and conditions of interconnection agreements between MCI and four rural local exchange carriers operating in South Carolina (the "RLECs"). MCI proposes to enter into an interconnection agreement with each of the RLECs, but the proposed terms and conditions are identical and the negotiations and arbitration were consolidated for purposes of administrative efficiency. The term "Interconnection Agreement" will be used herein to refer to the agreements between MCI and each of the respective RLECs: Farmers Telephone Cooperative, Inc., Hargray Telephone Company, Home Telephone Company, Inc., and PBT Telecom, Inc. It is expected that the result will be a single



model Interconnection Agreement that will be entered into between MCI and each of the respective RLECs.

Pursuant to Section 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (“Act”),<sup>1</sup> the negotiation of the Interconnection Agreement commenced on or about October 8, 2004. MCI filed its Petition, pursuant to the provisions of Section 252 of the Act, on March 17, 2005. MCI’s Petition set forth twenty-one (21) unresolved issues between the Parties. The RLECs filed a response (“Response”) on April 11, 2005, responding to the same issues raised in the Petition. The RLECs did not enumerate additional issues in their Response.

The Parties filed a Joint Motion Regarding Procedure on June 8, 2005, requesting certain changes in the pre- and post-hearing procedures. Joseph Melchers, Esquire, was appointed by the Commission to serve as a Hearing Officer in the matter. In response to the Parties’ Joint Motion, Mr. Melchers issued a Hearing Officer Directive on June 9, 2005, extending the timeframe in which the Commission must resolve the unresolved issues remaining in this arbitration proceeding until September 8, 2005, modifying the briefing schedule, and making certain modifications in the procedure for conduct of the hearing. The date for Commission resolution of unresolved issues was subsequently extended to October 8, 2005.

A hearing on this Arbitration was held beginning on June 13, 2005, with the Honorable Randy Mitchell, Chairman, presiding. At the hearing, MCI was represented by Darra W. Cothran and Kennard B. Woods. MCI presented the Direct and Rebuttal

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<sup>1</sup> 47 U.S.C. §§ 252(b)(1) and (2).